SUGGESTED CHANGES IN CRIMINAL PRACTICE.

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When the case of John Jones *v.* The Commonwealth, reported in 103 Va. 1012, was tried in the Circuit Court of Clarke county, after the Commonwealth had introduced her evidence, the counsel for the prisoner moved the court to strike it all out: 1. Because the corpus delicti had not been proved; and 2, because if proved the evidence did not connect the accused with the crime, which motion the court denied on the ground that there was no precedent in this State for the consideration of such a motion.

In opposing the motion, one of the array of counsel, appearing for the Commonwealth, called attention to an article entitled "Suggested Changes in Practice," found in the ninth VIRGINIA LAW REGISTER; but at the same time contended it had no application to a criminal case.

In preparing the case for the Court of Appeals, counsel for Jones had access to said article for the first time, and referred to it in the petition, stating that if logic and reason were on the side of such changes in civil cases, the same would apply with more force in a criminal case, as nothing can better deserve the protection of the courts than the life or liberty of the citizen.

When the case was being argued in the Court of Appeals the president asked, when this assignment of error was being discussed, if it would not be equivalent to directing a verdict, which of course would be the case, as the petition asked that the Court of Appeals, either enter a judgment of acquittal, or direct the Circuit Court of Clarke county to do so.

In deciding the case, the court held that it was unnecessary to consider this assignment of error; that the corpus delicti had not been proved, and even if it should be conceded that it had been proved, the evidence was plainly insufficient to warrant the verdict of the jury; and, accordingly the court set the verdict aside, and remanded the case for a new trial.

After the case came back to the lower court, it was continued for four or five terms in a vain effort on the part of the Com-

monwealth to secure additional evidence, and was finally nol prossed, which, of course, leaves Jones liable to another indictment.

The Court of Appeals in its opinion cites from McBride's Case, 95 Va. 826, also cited in Jones' petition, as follows: "He rests secure in that presumption of innocence, until proof is adduced, which establishes his guilt beyond a reasonable doubt, and whether the proof be direct or circumstantial, it must be such as to exclude any rational hypothesis of the innocence of the prisoner," and from Starkey on Evidence for the proposition that the corpus delicti must first be proved.

The natural conclusion from all of which would seem to be that until the Commonwealth had introduced evidence which measured up to the above requirements, there was nothing against one charged with crime in this State, and where evidence had been introduced, which amounted to nothing, it would be struck out by the court, when requested so to do.

In McBride's case, it was also held, that where evidence is introduced, which is not subsequently connected with the accused, it should be struck out when application is made; if this is the rule as to part of the evidence, can any reason be suggested, why it does not apply to all the evidence under like conditions? In the recent case of the C. & O. Ry. Co. *v.* Stock, reported in the LAW REGISTER for August, when reversing the scintilla doctrine, the court says: "A trial court, under what is known, as the scintilla doctrine, might be reversed for failure to give an instruction, which rightly propounds the law, and then be again reversed for sustaining a verdict in obedience to the instruction, because not supported by sufficient evidence."

If it is proper in a civil case for the trial court to pass on the weight of evidence to the extent of granting or refusing an instruction, surely a trial court in a criminal case should have the right to pass on the weight of evidence to the extent of not allowing a jury to consider it, where it is plainly insufficient to sustain a verdict of guilty.

If it is the law in this State that a man can be indicted, tried, and convicted on evidence, which is plainly insufficient to warrant the verdict of the jury, and his only remedy is to have the

verdict set aside and a new trial awarded him, where will the matter necessarily end? If one jury has been found willing to convict on insufficient evidence, it is not unreasonable to suppose that another may do the same.

The accused can not demur to the evidence without the consent of the Commonwealth, and if the case is nol prossed after the evidence has been held to be insufficient, he still can be indicted and tried again, which does not look as if the citizen can rest secure in the presumption of his innocence, until his guilt is established beyond a reasonable doubt.

It does seem that if the State, with unlimited resources at its command for securing evidence, sees fit to risk the case of the prosecution on evidence which is plainly insufficient in law, one charged with crime should be entitled to an acquittal, and if the courts have not the right to see that such judgment is entered, then the legislature ought to take the matter in hand, as it is no light matter for a man to be put upon his trial, even upon evidence, which surely will require the trial court or the Court of Appeals to set the verdict of guilty aside and grant a new trial, if one should be awarded.

Can any reason be assigned, why the courts should have the right to set aside verdicts of guilty, where the evidence is plainly insufficient, and not have the right to strike out all the evidence, before the case is given to the jury, where it plainly does not measure up to the requirements of the law, and thereby prevent the verdict of guilty under such circumstances?